agreements: new vehicle for investment in America's neighborhoods", *The Urban Lawyer*, vol. 39, no. 3, p. 657-670.

Ness I., Eimer S. (2001), *Central labor councils and the revival of American unionism. Organizing for justice in our communities*, M.E. Sharp, Amonk, NY, London.

Palermo P. (2004), *Trasformazioni e governo del territorio. Un'introduzione critica*, Franco Angeli, Milan.

Purcell M. (2006), "Urban democracy and the local trap", *Urban Studies*, vol. 43, no. 11, p. 1921-1941.

Salkin P. E., Lavine, A. (2008), "Understanding community benefits agreements: equitable development, social justice and other consideration for developers, municipalities and community organizations", *Journal of Environmental Law*, vol. 26, ssrn-id1272795.

Savage L. (2006), "Justice for janitors: scales of organizing and representing workers", *Antipode*, vol. 38, no. 3, p. 645–666.

Simmons L., Luce S. (2009), "Community benefits agreements: lessons from New Haven", *Working Usa*, vol. 17, p. 97-111.

Symon G., Crawshaw J. (2009), "Urban Labour, voice and legitimacy: economic development and the emergence of community unionism", *Industrial Relations Journal*, no. 40/2, p. 140-155.

Tattersal A. (2011), *Power in coalition. Strategies for strong unions and social change*, Cornell UP, Ithaca, NY.

Tocci W. (2009), "L'insostenibile ascesa della rendita urbana" , *Dialoghi Internazionali. Città del mondo*, no. 10, p. 17-59.

Turner L., Cornfield D. (2007), *Labor in the new urban battleground. Local solidarity in a global economy*, Cornell UP, Ithaca, NY.

Voss K., Sherman R. (2000), "Breaking the iron law of Oligarchy: Union revitalization in the American Labor movement", *American Journal of Sociology*, vol. 106, no. 2, p. 303-349.

Wells M. (2002), "When Urban policy becomes union policy: state structures, local initiatives, and union representation at the turn of the century", *Theory and Society*, no. 31, p. 115-146.

Wills J. (2001), "Community unionism and trade union renewal in the Uk: moving beyond the fragments at last?", *Transactions of the Institute of British Geographers*, vol. 26, p. 465-483.

Wills J., Waterman P. (2001), "Space, place and the New Labour internationalism: Beyond the fragments?", *Antipode*, vol. 33, no. 3, p. 305–311.

Wolf-Powers L. (2010), "Community Benefits Agreements and local government", *Journal of the American Planning Association*, vol. 76, no. 2, p. 1-19.

DEMETRIO MUÑOZ GIELEN, JAVIER BURÓN CUADRADO

STRUMENTI E PRATICHE DI PRELIEVO DELLA RENDITA IN EUROPA

Molte sono le forme di prelievo della rendita. Di seguito useremo, almeno in parte, la proposta di differenziazione tra strumenti di prelievo diretto e indiretto introdotta da Alterman (2012: 763-66, 775-79).

Gli *strumenti di prelievo diretto* cercano di catturare tutti o alcuni degli incrementi di valore della proprietà, nella logica esplicita che questo incremento appartenga alla comunità e non al proprietario. Ce ne sono di due tipi differenti:

- prelievo di valore non guadagnato: l'incremento di valore da recuperare non è la conseguenza di un'azione specifica di intervento o di una decisione, ma del fatto che esista in genere un aumento della popolazione e uno sviluppo economico;
- prelievo della miglioria: l'incremento di valore da recuperare è il risultato di un'azione specifica (un investimento pubblico in infrastrutture) o di una decisione pubblica (normativa urbanistica, tra cui, ad esempio un azzonamento che trasforma usi agricoli in residenziali).

Gli strumenti diretti sono considerati modi di redistribuzione della ricchezza e sono pertanto spesso assimilati a una tassazione (una tassa sul valore o sulla proprietà, una tassa sul trasferimento di proprietà o una tassa annuale) e talora possono assumere anche la forma di *developer obligation*. La motivazione del prelievo diretto risiede pertanto nel riconoscimento che gli incrementi di valore degli immobili dipendano dalla collettività e non da altre ragioni e pertanto richiede una solida base legislativa.

Gli *strumenti di prelievo indiretto* sono una forma più flessibile che cerca di catturare una parte dell'incremento di valore sulla base di ragioni differenti rispetto a quella che attribuisce tale incremento esclusivamente alla collettività. La più comune fra queste modalità prevede di internalizzare i costi della mitigazione degli impatti nei piani di sviluppo dei proprietari e degli operatori immobiliari, al fine di contribuire, in forma diretta o indiretta, alla realizzazione di infrastrutture e opere pubbliche nelle aree di nuovo sviluppo. Nonostante siano spesso usati dai soggetti pubblici in forza di leggi regionali o nazionali, gli strumenti indiretti possono operare senza alcuna, o quasi, legittimazione legislativa, il che li rende di agile applicazione. Così avviene in Olanda, dove la legislazione nazionale fornisce un supporto molto generico, mentre sono i comuni che ne definiscono in dettaglio l'assetto formale.

A motivo della loro varietà e del loro caratt
cale risultano meno visibili degli strumenti
nella letteratura specialistica, ma sono semp
diffusi nella pratica. La necessità di risorse ir
tive per le dotazioni pubbliche ha sviluppa
gli ultimi anni una gamma variegata di for
contribuzioni negoziali, sotto forma di den
suolo o di opere pubbliche, in cambio di sce
banistiche di vario genere (nuove destinazio
so più appetibili, incentivi volumetrici, ma
flessibilizzazione delle regolamentazioni esi
ecc.). Questi contributi negoziali sono varia
denominati *exactions* e *impact fees* negli Sta
ti, *development charges* in Canada, *plannin*
e *planning obligations* in Gran Bretagna, *pa*
tion in Francia, *bijdrage bovenwijkse voorzie*
in Olanda, *cargas adicionales* in Spagna. In
do con Alterman (*ibidem*) li chiamiamo tutt
loper obligations, anche se possono ricadere
stessi strumenti diretti, qualora la loro motiv
risieda esclusivamente nell'incremento di
della proprietà dovuto all'azione della collet
In aggiunta alle *developer obligations* ci
altri strumenti indiretti basati sulla neces
internalizzare i costi di mitigazione degli
ti, ma sono meno negoziabili e possono p
essere considerate vere e proprie tasse, de
nate ad esempio *Community Infrastructu*
in Gran Bretagna, *tax d'aménagement* in F
Erschliessungsbeitrag in Germania, *cargas*
banización, cesiones e reservas de suelo in S
e *exploitatiebijdrage* in Olanda. Questi stru
consentono minori margini di negoziazion
le, rispetto alle *developer obligations* ne
perché sono regolati in modo piuttosto
fondito nelle relative leggi regionali o stat
prescrivono con sufficiente dettaglio la dot
di standard e di requisiti operativi, sulla b
riconoscimento a priori di alcune categorie
nali degli interventi.

Gli strumenti diretti ed indiretti sono in
inseriti in politiche urbane di più ampio
per incrementarne l'efficacia (1). Ad esem
operatore potrebbe concordare con l'ente
co la costruzione diretta o il finanziament
opere pubbliche e di una quota di edilizia
Se questi contributi si basano sulla logica d
nalizzare i costi degli impatti urbanizzativi,
trattando di strumenti indiretti. Altrimenti,
si intende recuperare alla collettività la renc
vata, allora si parla di strumenti diretti.

Altra politica dei suoli ad ampio spettro è la
posizione fondiaria (ad esempio, *Umlegung*
mania e *reparcelación* in Spagna), i cui dis
rafforzano l'efficacia degli strumenti di
della rendita. La regolamentazione dei diri
doveri dei proprietari di suoli prevede che
di trasformazione urbanistica spetti a loro
mento, totale o parziale, dei costi delle int
ture pubbliche, la cessione, in alcuni casi c
delle aree e la predisposizione dei lotti edif

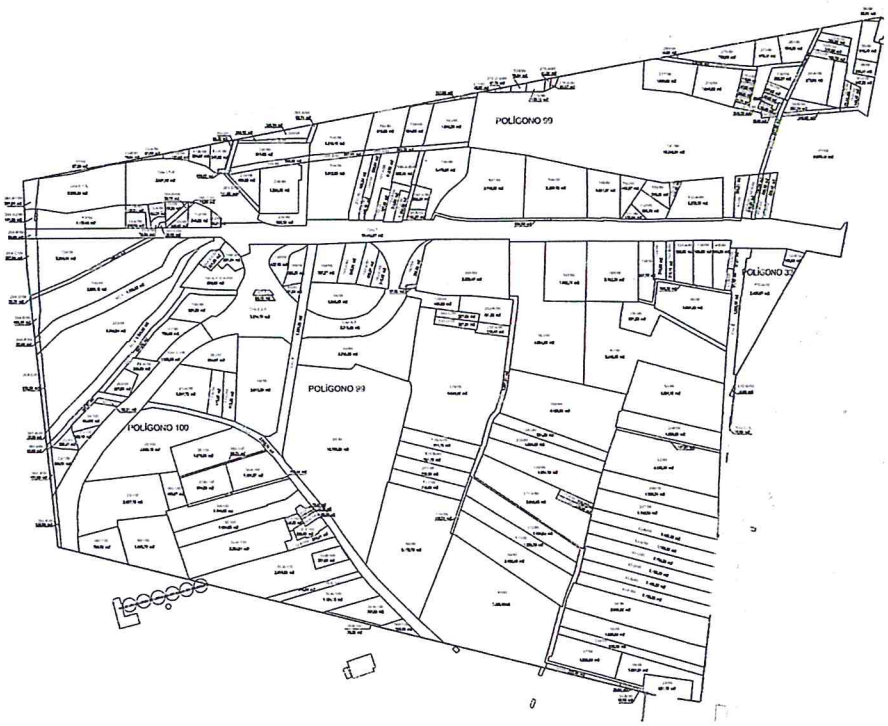
PROGETTO MORERAS II A VALENCIA
. 1857 ALLOGGI) PRIMA E DOPO LA
AZIONE. NELLA PAGINA A FRONTE: I CONFINI
ETÀ PRIMA E DOPO LA RICOMPOSIZIONE
\ / DEVELOPMENT AREA OF MORERAS II,
(31 HECTARES, 1857 APARTMENTS) BEFORE
SITE TRANSFORMATION. OPPOSITE PAGE:
BOUNDARIES BEFORE AND AFTER LAND
MENT

Si tratta di una modalità di prelievo indiretto, perché comporta l'internalizzazione dei costi, come avviene in Germania e in Spagna, ma sono previste anche modalità dirette, nel caso in cui ai proprietari fondiari si chieda di restituire una parte dell'incremento di valore dei suoli, con la motivazione che esso appartiene alla collettività. Ad esempio, la *reparcelación* spagnola prevede, oltre al pagamento di tutte le infrastrutture pubbliche necessarie, anche la cessione gratuita al comune di una quota adeguata di lotti edificabili per costruirvi almeno il 10% del totale dell'edificabilità prevista nell'area (2).
Nel complesso, tutti gli strumenti diretti ed indiretti interferiscono con i diritti e i doveri dei proprietari, secondo forme ed intensità differenti. Nei paragrafi successivi saranno illustrate le tre diverse modalità che incidono in forma progressiva sulla rendita.

Developer obligations, di tipo negoziale e non negoziale

Includono una varietà estesa di oneri di tipo monetario e non, per costruire direttamente, o attraverso un contributo in denaro, gli elementi dello spazio pubblico (strade, percorsi, parchi pubblici), i servizi pubblici (scuole, strutture sanitarie), la residenza sociale (in genere per la vendita, ma anche per l'affitto) e le misure di sostenibilità ecologica, per realizzare o pagare quote prestabilite di grandi infrastrutture individuate dal piano e in genere localizzate *off site*. Sono contributi previsti dalle leggi statali o regionali che ne riconoscono esplicitamente la legittimità in sede di scelte urbanistiche e ne stabiliscono limitazioni in forma diversamente stringente rispetto agli obiettivi. È il caso delle *planning obligations* inglesi, basate su una legislazione datata (introdotta inizialmente dal Town and Country Planning Act del 1932, nella sezione 34) che riconosce l'autorità dei comuni ad attivare negoziazioni con i proprietari fondiari (Moore 2005: 345-346). Alcuni paesi, pur non riconoscendo per legge la facoltà di negoziare contributi nella pianificazione urbanistica, di fatto la praticano, come l'Olanda (Muñoz Gielen 2010: 241-242).
In ogni caso, è opportuno che gli oneri siano previsti e quantificati dai documenti della pianificazione locale, come oggi avviene in Gran Bretagna (3). Dagli anni '90, i comuni inglesi hanno progressivamente introdotto disposizioni sempre più formalizzate e attualmente la maggior parte dei comuni ne dispone (Campbell *et al.* 2000: 760, 763-764; DCLG 2006: 19-20). In questo modo si è verificato un aumento generalizzato dei contributi stessi.
Oltre un quinto dei 400 comuni olandesi ha approvato documenti analoghi. Scarsa è la legislazione statale in materia di *developer obligations* negoziali, un fenomeno relativamente nuovo in Olanda, e carente è la trasparenza degli atti.

Non ci sono quasi informazioni disponibili sulle quantità e le caratteristiche degli oneri che vengono attualmente negoziati, ma, ad eccezione di questo 20% di comuni, è presumibile che la maggior parte degli enti locali non chieda molto più delle infrastrutture di base necessarie (Muñoz Gielen, van der Krabben 2015).
In alcuni paesi, oltre alle contribuzioni negoziate, i soggetti pubblici richiedono un pagamento e/o la realizzazione di una quota minima di standard normata e non negoziabile. Ad esempio non è negoziabile la *Community Infrastructure Levy* in Gran Bretagna, ma può essere incrementata attraverso le *planning obligations* negoziabili. In Spagna lo standard minimo fissato per legge è più consistente, non è negoziabile e in alcuni casi si aggiungono contributi negoziali (4).
Una forma specifica di *developer obligations* riguarda quote minime di housing sociale. Ne sono dotati quasi tutti i paesi europei, come l'Olanda e la Gran Bretagna dove tali quote si aggirano attorno al 30%. In Spagna sono percentuali minime obbligatorie stabilite da leggi regionali: la regione basca è stata la prima a introdurli e si è spinta molto più in là di tutte le altre regioni, fissando le quote obbligatorie più alte (75% su suoli liberi e 40% nelle aree dismesse) e regolandone l'uso e la successiva vendita a tempo indeterminato (gli alloggi sociali non possono essere commercializzati sul libero mercato e devono essere rivenduti a un prezzo prestabilito solo all'ente pubblico per la casa a statuto regionale).



La ricomposizione fondiaria

La ricomposizione fondiaria, come si è detto, è una modalità più stringente delle *developer obligations*, siano esse negoziali o no, perché non include soltanto gli oneri obbligatori per i proprietari che richiedono l'edificabilità dei suoli. Si tratta di una modalità attraverso la quale il soggetto pubblico ha la facoltà di prescrivere la trasformazione, in presenza o carenza di una richiesta specifica dell'operatore, oppure persino in contrasto. In questo modo la ricomposizione obbliga i proprietari (da soli o in accordo con altri) a intervenire pagando la quota corrispondente di oneri. È lo strumento per trattare il frazionamento proprietario e in Spagna è utilizzato anche per evitare rinvii speculativi. Così, mentre le *developer obligations* sono la condizione per consentire l'edificabilità ai proprietari che la richiedono espressamente, la ricomposizione fondiaria in Germania e in Spagna consente ai comuni di rendere obbligatoria la trasformazione, assolvendo anche agli obblighi contributivi, indipendentemente dalla volontà degli operatori. In questo senso interferisce in modo più pesante con i diritti dei proprietari.
In ogni caso, la ricomposizione fondiaria non sempre contribuisce a risolvere i problemi come afferma di fare e in alcuni paesi resta lettera morta nelle leggi. La *reparcelación* spagnola è stata introdotta nel 1956 e la sua evoluzione fino ad oggi dimostra piuttosto chiaramente quali siano gli ingredienti che la possono rendere efficace. Fino agli anni '90 il dispositivo non ha contribuito efficacemente a combattere la speculazione fondiaria e non ha reso disponibile aree adeguatamente infrastrutturate. Solo dopo l'elezione delle prime amministrazioni locali democratiche negli anni '80 e dopo alcune principali modifiche nell legislazione nel decennio successivo (che hann riguardato soprattutto l'introduzione e l'ampli mento degli standard minimi di legge per le infr strutture pubbliche e di percentuali minime obbl gatorie di housing sociale) si sono ottenuti buor risultati (Burón Cuadrado 2006; Muñoz Giele Korthals Altes 2007; Muñoz Gielen 2014).

Conclusioni

In tutta Europa i soggetti pubblici spesso cercano di recuperare alla collettività almeno una parte dell'incremento di valore indotto dallo sviluppo e dalle trasformazioni urbane. A questo scopo sostengono una varietà di strumenti che si fondano su tradizioni differenti, anche da un punto di vista giuridico. L'obiettivo più diffuso è quello di internalizzare i costi delle infrastrutture pubbliche necessarie allo sviluppo. Un obiettivo sostenuto nel dibattito politico e nella società civile in contesti differenti, da quelli conservatori a quelli più progressisti. Spesso si basano su una legislazione chiara e dettagliata, ma si avverte anche una diffusione di strumenti di natura locale, svincolati quasi da meccanismi giuridici riconosciuti.

In altri casi invece si invoca una motivazione più tradizionale secondo la quale l'incremento di valore dei suoli edificabili appartiene alla collettività e pertanto ad essa va riconosciuto, con una tassazione della rendita fondiaria a monte.

Note

1. È probabile che la maggior parte delle politiche urbane vi si riconosca: tra queste, la nazionalizzazione dei suoli e degli sviluppi urbani, la riserva di suoli urbani, il controllo sulle trasformazioni private, le operazioni in sinergia pubblico/privata e la ricomposizione fondiaria.

2. Questa modalità denominata *cesión* si basa sul principio costituzionale spagnolo (1978) secondo cui "alla collettività è riconosciuta una quota dei benefici conseguenti alle politiche pubbliche di piano" (sez. 47).

3. A titolo esemplificativo, nel documento di Bristol SPD4 *Come pianificare attraverso l'uso delle Planning Obligations* (2005) si prescrive che: nelle trasformazioni residenziali di almeno 25 alloggi o di almeno un ettaro di superficie debba garantirsi una percentuale minima di edilizia sociale sul totale delle abitazioni (quantificata nel 30% nel 2007); nelle trasformazioni residenziali di almeno 40 alloggi debba essere corrisposta una quota pari a 9,136 per alunno eccedente il numero massimo previsto per la scuola d'infanzia e per la scuola elementare, e di 14,346 per alunno eccedente il numero massimo previsto per la scuola media.

4. I seguenti sono esempi di standard minimi obbligatori non negoziabili nelle aree progetto residenziali secondo la normativa (1998) della regione di Valencia: nelle aree con indice territoriale minimo pari a 1 mq/mq, una percentuale non inferiore al 63% della superficie totale deve essere utilizzata per lo spazio pubblico (15% per aree verdi, 20% per servizi pubblici, 28% per strade); i progetti di oltre 8000 mq di slp devono garantire almeno un lotto per servizi pubblici.

5. Lo stato e ciascuna delle 17 regioni autonome condividono responsabilità nella legislazione urbanistica. Lo stato centrale mantiene competenze esclusive sul regime proprietario (ad esempio, l'espropriazione), le procedure amministrative, la legislazione ambientale e le infrastrutture di livello nazionale. Le regioni dispongono di quasi tutte le altre competenze in materia urbanistica, e per questa ragione hanno potuto sviluppare diversi modelli di ricomposizione fondiaria fin dagli anni '90.

DEMETRIO MUÑOZ GIELEN, JAVIER BURÓN CUADRADO

EXPERIENCES WITH PUBLIC VALUE CAPTURE ACROSS EUROPE

There are many different sorts of value capture tools. We partly follow here Alterman's categorization by distinguishing between direct and indirect instruments (2012: 763-66, 775-79). *Direct value capture instruments* seek to capture all or some of the economic value increase of property under the explicit rationale that this value increase belongs to the community and not to the landowner. There are different sorts of capture: *i.* of the unearned increment, i.e., the increased value that must be captured is not the consequence of governmental action or decisions but of general population growth and economic development; *ii.* capture of betterment, i.e., the increased value that must be captured is the result of governmental action (public investments in infrastructure) or decisions (land-use regulation, e.g., rezoning land from agricultural to residential). Direct instruments are considered wealth redistribution instruments and thus often a tax (capital gains tax, tax upon transfer of title or annual property tax, etc.) that needs an explicit and detailed legislative basis at the regional or national level. However, direct instruments might also take the form of a 'developer obligation.' Thus, direct value capture instruments are exclusively motivated by the rationale that the increased value belongs to the community (and by no other rationale) and must have the support of a regional or national legislative authority.

Indirect value capture instruments are more pragmatic and seek to capture some of the economic value increase under different motivating rationales other than the value increase belonging to the community. The most common one is that landowners and developers should internalize the costs of mitigating the impacts of their building plans, i.e., to pay for the public infrastructure and facilities directly or indirectly needed to support their plans. Indirect value capture tools are introduced often by local authorities and can support regional or national legislation. However, they can also operate without any or almost any legislative authority, which makes their introduction relatively easy. For instance, Dutch negotiated developer obligations (*bijdrage bovenwijkse voorzieningen*) rely on some basic regulation from the central government but it is the municipality that regulates them in detail. Because of their variety and local character, indirect instruments are less visible in literature than direct tools, but in practice, they have increasing popularity. The need for innovative funding sources for public services has stimulated over the last years a plethora of locally inspired ways of negotiating contributions of landowners and developers for money, land or construction services in exchange for land-use regulation decisions of any kind (rezoning, additional development rights, relaxation of existing land-use regulations, etc.). These negotiated contributions are called different things in different countries: *exactions and impact fees* in the US, *development charges* in Canada, *planning gain* and *planning obligations* in the UK, participation in France, *cargas adicionales* in Spain, etc. We follow here Alterman (*ibidem*) and name all of them 'developer obligations'. We should not forget, however, that some forms of developer obligations, if based on the rationale alone that the economic value increase belongs to the community and should therefore be paid back to the public belong too to the direct value capture instruments.

Besides negotiated developer obligations there are other indirect instruments that still support the rationale that developers should internalize the costs of mitigating impact, but are less negotiable and might even be considered as taxes, for example, the *Community Infrastructure Levy* in England, the *Tax d'aménagement* in France, *Erschliessungsbeitrag* in Germany, *Cargas de Urbanización, cesiones* and *reservas de suelo* in Spain and *Exploitatiebijdrage* in the Netherlands. These instruments do support regional/national detailed legislation that regulates more precisely their scope with detailed legal standards and categorizations and therefore have less of a local character than the negotiated developer obligations.

Direct and indirect instruments are usually embedded into broader land policy regimes (1) that can influence their effectiveness to a large extent. For example, in private and in public private land development a developer might agree with a public body that the developer itself constructs the public infrastructure and some social housing. Alternatively, they might agree that the public body constructs the public infrastructure and the developer pays for it. As long as these contributions are based on the motivating rationale of internalizing the cost of development, we are dealing with indirect value capture instruments. However, if these contributions are based on the rationale that the value increase belongs to the community and should therefore be given back to it, we are talking about direct instruments.

Another example of broader land policy regime is land readjustment (e.g., *Umlegung* in Germany and *Reparcelación* in Spain). Land readjustment regulations (Lr) have the potential to increase the effectiveness of value capture instruments. determine the rights and obligations of landowners when developing their land and whether the

have to pay the costs of public infrastructure, provide the land needed for this infrastructure, and/or have to share the final serviced building plots. Under certain circumstances, public bodies can force landowners to deliver their land for free and to pay their corresponding share of public infrastructure. Lr include mainly indirect value capturing instruments because their main motivating rationale is the internalization of the mitigation costs of development. This is the case with the costs that can be charged to landowners in the German and Spanish Lr. However, Lr can also include direct value capturing instruments in case landowners must share part of the economic value increase with the public, with the argument that this increase belongs partially or totally to the public. E.g., the obligation in the Spanish *Reparcelación*, besides paying for all needed public infrastructure, to cede for free to the municipality enough serviced building plots to construct at least 10% of the total floor space index in the development area (2).

All of these instruments, direct and indirect of any kind, interfere to different degrees with the rights and duties of landowners. In the next paragraphs, three different tools will be discussed, starting with the more modest and finishing with the most assertive ones.

Developer obligations, negotiable and non-negotiable

Developer obligations include a wide variety of pecuniary and non-pecuniary contributions: the obligation to construct the public space (roads, footpaths, public parks), social facilities (schools, health services), social and affordable housing (usually for sale but also for rent) and sustainable measures or in-kind payment to public authorities to contribute to specifically defined large infrastructures, usually located off-site. These obligations can support national/regional legislation that explicitly recognizes the legality of such obligations in exchange for land-use regulation decisions of any kind and defines more or less sharp limits to the scope of the contributions. For example, this is the case of the British *planning obligations* that support an old legal prescription (first introduced by section 34 of the 1932 *Town and Country Planning Act*) that explicitly entitles local governments to enter into negotiations with property developers (Moore 2005: 345-346). Even in countries where the legal basis does not exist for negotiated contributions based on land-use regulations, this happens in practice as the Dutch case shows (Muñoz Gielen 2010: 241-242). In any case, obligations should be prescribed in local policy documents that define and quantify the contributions, as is actually the case in the UK (3).

Since the 1990s, English municipalities are increasingly introducing formal policy on planning obligations. Nowadays, a majority of local authorities have enacted such policies (Campbell *et al.* 2000: 760, 763-764; DCLG 2006: 19-20). This has resulted in a generalized increase of contributions.

In the Netherlands, more than 20% of all 400 municipalities have approved similar policy documents. As negotiated developer obligations are a relatively new phenomenon in the Netherlands, they are poorly regulated in national legislation and there is not much transparency. There is almost no data available about the amount and characteristics of actually negotiated contributions, but besides this 20%, presumably most municipalities are not asking much more than a minimal package of necessary public infrastructure (Muñoz Gielen, van der Krabben 2015).

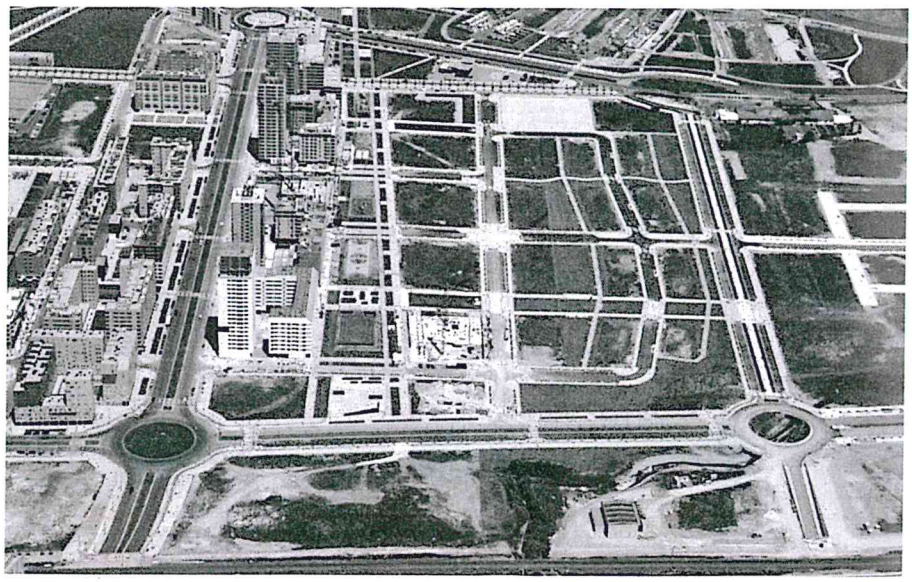
In some countries, besides negotiated developer obligations, public bodies demand developers pay and/or implement a legal basic minimal package of standard charges, which are not negotiable. For example, the non-negotiable *Community Infrastructure Levy* in England, which can be complemented with the negotiable *planning obligations*. In Spain there is a large minimal package of standard charges regulated in law, which are thus non-negotiable and sometimes are supplemented with negotiable obligations (4).

A specific form of developer obligations regards minimal percentages of social and affordable housing. Almost all European countries use such minima, e.g., 30% in the Netherlands and similar percentages in the UK. In Spain, these minimal percentages are established in regional laws and are non-negotiable. The Spanish region of the Basque Country was the first in establishing these minimal legal percentages and has gone further than any other region by prescribing the highest percentages (75% in green-fields and 40% in brown-fields) and by regulating their use and transmission (affordable units cannot be traded in the free market and must be sold back for a regulated low price to a regional housing company, this prescription being in force *ad aeternum*).

Land readjustment

As mentioned before, Land readjustment goes further than developer obligations (negotiated or not) because it does not only include obligations to be satisfied by the property developers when they ask for a land-use regulation decision to allow them to build on their land. Lr also prescribes the possibility that the public administration forces development, whether landowners ask for a land-use decision or whether or not they agree. An Lr can force landowners to develop their land (or cooperate with others to do so) and pay their corresponding share of contributions. Lr is used to cope with the problem of scattered property ownership, and in Spain also to avoid land speculators delaying development. So while developer obligations are just meant as a condition to be satisfied only in case property developers want the municipality to rezone their land into building land, Lr in Germany and Spain allows municipalities to force development and fulfil the developer obligations, irrespective of whether landowners want rezoning or not. In this sense, Lr interferes more substantially with the rights of landowners.

However, Lr does not always contribute to resolving the problems it claims to resolve and in some countries is even a negative concept in legislation. The Spanish *Reparcelación* was introduced in 1956 and its evolution until today illustrates quite well the ingredients that make Lr effective (or not). Until the 1990s the regulation did not really contribute to fighting land speculation, and it did



not provide properly serviced development areas with enough public infrastructure. Only after the arrival of the first democratically elected local governments in the 1980s, and after some major legal modifications in the 1990s (mainly the introduction and enlargement of minimal legal standards for public infrastructure and minimal obligatory percentages of social and affordable housing), did Lr provide good results (Burón Cuadrado 2006; Muñoz Gielen, Korthals Altes 2007; Muñoz Gielen 2014). Two different regional sub-models of *Reparcelación* are relevant, those of Valencia and the Basque Country (5).

The Valencian Lr introduced in 1994 the possibility of organizing a public tender to appoint a private party as implementing party. The 'implementing party' is the one who prepares all the necessary documents and procedures and provides the necessary public infrastructure. Its role is fundamental. Before the Valencian model only a majority of at minimum 60% of landowners could be pointed out as an implementing party. Only in the event that a landowner did not properly implement an Lr would a public body have the legal capacity of becoming the implementing party and forcing an Lr. The Valencian model introduced the possibility of organizing a public tender to appoint a private party as implementing party after evaluating different proposals. This implementing party does not necessarily need to own the land, although it is usually at least a part owner. Once appointed by the municipality, all other landowners are forced to deliver the land necessary for the public infrastructure and pay their corresponding part of the infrastructure costs and the costs made by the implementing party. Finally, the implementing party, after readjusting the property boundaries and providing the infrastructure delivers for free the public infrastructure to the municipality and distributes the resulting serviced building plots among the landowners. This Valencian model has accelerated the process of plan making and of negotiation among landowners, and thus increased very significantly the total developed areas since its introduction in 1994. It has notably improved the amount and quality of public infrastructure in new urban developments. This model has been gradually introduced in many other regions in the rest of Spain (Muñoz Gielen, Korthals Altes 2007). This being said, there is a great deal of debate in Spain about the ultimate consequences of this model. Some have argued that it has attracted speculative investments in urban development leaving the region with one of the greatest stocks of new empty dwellings and offices in Spain. Others underline that other regions of Spain also suffer from the same problem of empty stocks even though they apply the old Lr regulation in which landowners had a much stronger position and there was need to rely on a majority of them.

The Basque Lr consists of a remarkable combination of active public land policy (public land banking and development) and Lr, and the case of the city of Vitoria-Gasteiz illustrates it the best. This municipality developed ambitious plans in the 1980s for large urban expansions of the green-field surroundings of the existing city. These plans included large standards of obligatory public infrastructure of high quality and large obligatory percentages of social and affordable housing, supported by regional legislation. Initially, landowners refused to implement the plans, so Lr stagnated. The municipality then decided to use its legal powers to force Lr (the municipality became the implementing party in several development sites) and in several cases also threatened to expropriate those landowners refusing to cooperate. Alongside this, the regional government built a large amount of social and affordable housing on land mainly obtained for free from non-negotiable legal obligations such as *cesiones* y *reservas de suelo*. This assertive public intervention dissuaded landowners from opposing the implementation of the plans, most of which were developed through Lr. This combined approach has resulted in well-provided neighbourhoods with abundant public infrastructure and a large amount of social and affordable housing, covering about 70% of all new housing from 1994 to 2000 in the City of Vitoria-Gasteiz (Burón Cuadrado 2006). Thanks to Lr, public expenditure has been modest but has yielded significant results, which explains why nowadays the involved municipal and regional public agencies are enduring the economic crisis without major problems. This contrasts especially with the large financial risks taken by traditionally activist public bodies involved with land policy in other European countries.

Public active land policy

Since the Second World War, and more or less until the 1980s, Dutch municipalities applied on a huge scale an 'active land policy' (public land banking and development). An active land policy consists of a public body buying land that becomes rezoned for development, providing the infrastructure, selling the serviced parcels and bearing the corresponding risks and eventual profits. This approach was applied to develop industrial areas, offices and housing. For about four decades, Dutch municipalities had a predominant, almost monopolistic position in urban development. This active public intervention was institutionalized through public land development companies, of which almost all municipalities had one.

ESPANSIONI URBANE A VITORIA-GASTEIZ, SPAGNA / URBAN DEVELOPMENT IN VITORIA-GASTEIZ, SPAIN

Non-profit housing associations and municipal housing companies bought many of these plots and developed social housing on them. Commercial developers played a modest role, not only buying some of the plots to build free market housing, but also to build some social housing, mostly owner-occupied. The central government subsidized and assumed the financial risks of both the active land policy of the municipalities and the building of social housing (Korthals Altes 2007).

At the end of the 1980s this policy changed. Various circumstances coincided at that time. First, the economic recession in the 1980s led to an important rise in public expenditures and hence to budgetary cuts. Central government subsidies for public land development were reduced and those for the development of social housing abolished (Muñoz Gielen, Hoekstra 2008: 202-203). Second, the central government moved from a policy mainly oriented to the building of social housing to giving market parties a more prominent role in housing construction. This translated into a diminishing share of social housing and an increase of free market housing in new urban development. In 1993 housing associations became financially autonomous from the central government. Due to these changes, since the 1980s, the percentage of social rented housing has drastically diminished in new buildings.

As a consequence of these changes, the profitability of developing land increased, which augmented the pressure on the land markets. Many private parties, aiming for a share in the development profits, started buying land. As a result, land prices have drastically increased, making it harder for municipalities to keep on buying the land and developing it. Some describe this transition as a shift from a public monopoly on the land market towards private monopolies (Priemus, Louw 2003: 369-370). However, there are still many examples of Dutch municipalities deploying an active land policy, and generally this has led to well-serviced residential areas with a still significant percentage of social rented housing (20-30% in new developed areas).

As long as the market price of housing, offices and industrial real estate kept rising from the 1990s until 2008, municipalities were able to cope with the increasing financial risks of buying expensive land and kept on capturing a significant part of the value increase of land and investing it in public infrastructure. Housing associations managed to pay for new social housing with the profits from developing and selling free market housing. Today, the Netherlands still shows enviable performance on social housing that can definitively serve as an inspiration for other countries: about 40% of the total housing stock is social rented housing. However, the economic crisis of 2008 has laid bare the enormous risks of deploying public active land policies in speculative land markets. From 2010 to 2012 Dutch municipalities suffered an estimated total loss of 3.7 billion. Since 2013 the losses have moderated and expectations for future years have improved (Deloitte 2014: 13-14) but many municipal budgets have yet to recover and it is uncertain whether active land policies will become profitable again.

Conclusions

Across Europe public bodies often pursue capturing at least part of the increase in economic value that accrues from urban development. To do so they support a variety of public value capture instruments based on different legislative traditions. The most common rationale is to internalize the costs of public infrastructure that are needed for urban development. This rationale profits from political and societal support in different political contexts ranging from conservative to progressive governments. Often value capture relies on explicit and detailed legislation but there is also a growth of tools developed locally with almost no legislative basis from higher orders of government. Also, some instruments support the more classic rationale that the value increase belongs to the community and should revert to it.

Notes

1. The central Spanish state and each of the 17 Spanish regions (Autonomous Communities) share the legal competences in the urban planning field. The central government maintains exclusive competences for property law (e.g., expropriation law), common administrative proceedings, environmental law and national infrastructure. The regions have authority for almost all other competences of planning law, which allowed them to develop since the 1990s different models of Lr.

2. Probably most land policy regimes fall into one or more of the following: nationalization of all land and public land development; public land banking and development; private land development; public-private land development and land readjustment.

3. Some examples of standard contributions defined in Bristol's 2005 SPD4 *Achieving Positive Planning through the use of Planning Obligations* are as follows: in residential developments of 25 or more dwellings or 1 or more hectares a percentage of the total number of units has to be granted to local affordable housing (30% in 2007). In residential developments of 40 or more dwellings, 9,136 per additional pupil in excess of the programmed capacity of local nursery and primary schools is required, as well as 14,346 per additional pupil in excess of the capacity of local secondary schools.

4. Some examples of non-negotiable minimum standards for residential schemes in the *Regulations* of the region of Valencia (1998) are as follows: in urban transformations where gross floor area is greater than 1 square metre/square metre index, a minimum 63% of the area has to be designated for public space (15% for green areas, 20% for public facilities, and 28% for roads) and development schemes with more than 8,000 square metres of gross floor area must provide at least one plot fo public facilities.

5. This *cesión* is based on the Spanish constitutiona principle that 'the community shall have a share i the benefits resulting from the town planning policie of public bodies' (section 47, 1978 Constitution).

References

Alterman R. (2012), "Land-Use Regulations and Property Values. The 'Windfalls Capture' Idea Revisited", in N. Brooks, K. Donangy, G.J. Knapp (eds.), *The Oxford Handbook on Urban Economics and Planning*, Oxford UP, p. 755-786.

Burón Cuadrado J. (2006), "Land reserves for subsidized housing: lessons learned from Vitoria-Gasteiz", *Architecture, City and Environment*, vol. 1, no. 2, Universitat Politécnica de Catalunya, p. 1-20.

Campbell H., Ellis H., Henneberry J., Gladwell C. (2000), "Planning obligations, planning practice, and land-use outcomes", *Environmental and Planning B: Planning and Design*, vol. 27, p. 759-775.

Deloitte (2014), *Monitor gemeente financiën 2014. Special: grond en vastgoed*, Deloitte, Utrecht.

Department for Communities and Local Government DLCG (2006), *Valuing Planning Obligations in England*, London, DCLG Publications, May.

Korthals Altes W. (2007), "The impact of abolishing social-housing grants on the compact-city policy of Dutch municipalities", *Environment and Planning A*, vol. 39, p. 1497-1512.

Moore V. (2005), *A practical approach to Planning Law*, Oxford UP, Ninth Edition.

Moya L. (2008), ed., *La Vivienda Social en Europa. Alemania, Francia y Países Bajos desde 1945*, Mairea Libros, Madrid.

Muñoz Gielen D. (2010), *Capturing value increase in urban redevelopment*, Sidestone Press, Leiden.

Muñoz Gielen D. (2014), "Urban governance, property rights, land readjustment and public value capturing". *European Urban and Regional Studies*, vol. 21, no. 1, p. 60-78.

Muñoz Gielen D., Korthals Altes W. (2007), "Lessons from Valencia: separating infrastructure provision from landownership", *Town Planning Review*, vol. 78, no. 1, p. 61-79.

Muñoz Gielen D., Hoekstra J. (2008), "De la política de Vivienda Social en los Países Bajos", in L. Moya, cit., p. 201-209.

Muñoz Gielen D., van der Kraben (2015), "Finance of public infrastructure after the economic crisis and the role of indirect instruments of value capturing in the Netherlands", paper, *9th Annual Conference of the International Academic Association for Planning Law and Property Rights*, Volos, Greece, February.

Priemus H., Louw E. (2003), "Changes in Dutch land policy: from monopoly towards competition in the builiding market", *Environment and Planning B: Planning and Design*, vol. 30, p. 369-378.